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05-391 SEP 27 2005

No.

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In the Supreme Court of the United States

WILLIAM THOMAS PERKINS,

Petitioner

v.

THE STATE OF GEORGIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is Georgia's statutory "jurisdictional exception" to double jeopardy, O.C.G.A. § 40-6-376(d), unconstitutional under the Double Jeopardy Clause as applied to the facts of this case, where, following an apparently valid conviction and a fully served sentence, the statute enables a second prosecution that would otherwise be barred under the "same elements test" of *Blockburger v. United States*, 284 U.S. 299 (1932)?

2. Has the judicially created "jurisdictional exception" to double jeopardy, engendered by *Diaz v. United States*, 223 U.S. 442 (1912), been overruled by *Blockburger v. United States*, 284 U.S. 299 (1932); *Waller v. Florida*, 397 U.S. 387 (1970); *Brown v. Ohio*, 432 U.S. 161 (1977); and *Illinois v. Vitale*, 447 U.S. 410 (1980)?

3. Is O.C.G.A. § 40-6-376(d) unconstitutional on its face under the Double Jeopardy Clause, where the statute was drafted for the sole purpose of enabling the State to disregard an apparently valid conviction and a fully served sentence, so that the State might prosecute, convict, and punish a defendant again for the same offense?

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William Thomas Perkins respectfully petitions this Honorable Court for a writ of *certiorari* to review a judgment of the Supreme Court of Georgia.

OPINIONS BELOW

(set forth in chronological order)

State v. Perkins, Superior Court of Whitfield County, Georgia, Case No. 44,048 (September 20, 2001): Based upon stipulated facts and undisputed evidence, Judge Coy Temples found that Petitioner had previously been prosecuted, convicted and sentenced for reckless driving in Probate Court, that he had served the Probate Court's three-month probated sentence, that the pending indictment charged Petitioner with the same reckless driving offense and with vehicular homicide, and that both charges arose from the same facts. Noting that the two offenses were the same for double jeopardy purposes, Judge Temples sustained Petitioner's plea of former jeopardy. He denied the State's motion to declare the Probate Court conviction "null and void" pursuant to O.C.G.A. § 40-6-376(d), finding the statute inapplicable by its own terms. Since he considered it inapplicable, Judge Temples declined to address the statute's constitutionality. [Unreported; A-6]

State v. Perkins, 256 Ga. App. 855, 569 S.E.2d 910 (July 15, 2002): The Georgia Court of Appeals, in a whole-court opinion with two judges concurring specially and two dissenting, affirmed Judge Temples' order, holding that the statute did not apply. [A-10]

State v. Perkins, 276 Ga. 621, 580 S.E.2d 523 (May 5, 2003): The Georgia Supreme Court reversed, ruling that O.C.G.A. § 40-6-376(d) was applicable. The Court acknowledged that the two offenses were the same for purposes of double jeopardy but spoke approvingly of "the jurisdictional exception." The Court remanded for a determination of the statute's constitutionality. [A-18]

State v. Perkins, Superior Court of Whitfield County, Case No. 44,048 (March 25, 2004): Judge Cindy Morris summarily denied Petitioner's challenges to the constitutionality of the statute. [Unreported; A-23]

Perkins v. State, 279 Ga. 506, 614 S.E.2d 92 (June 6, 2005) [the judgment sought to be reviewed]: The Georgia Supreme Court rejected Petitioner's constitutional double jeopardy challenges to O.C.G.A. § 40-6-376(d). The Court ruled that, notwithstanding the prior conviction and fully served Probate Court sentence, the State could retry Petitioner in the Superior Court. [A-26] The Court denied Petitioner's motion for rehearing on June 30, 2005. [A-28]

JURISDICTION

This Court has jurisdiction of this case under Article III, Section 2 of the United States Constitution and under 28 U.S.C. § 1257(a), which provides, "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of *certiorari* where the validity of . . . a statute of any State is drawn in question on the ground of its being repugnant to the Constitution. . . ."

The pre-trial denial of a plea of former jeopardy is directly appealable. *Abney v. United States*, 431 U.S. 651, 662 (1977).

The judgment of the Supreme Court of Georgia was entered on June 6, 2005. Petitioner's motion for rehearing was denied on June 30, 2005. This petition is therefore timely.

RELEVANT CONSTITUTIONAL PROVISIONS AND STATUTES

U.S. CONST. amend. V [The Double Jeopardy Clause]:

"nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb . . ."

U.S. CONST. amend. IV [The Due Process Clause]:

"nor shall any state deprive any person of life, liberty, or property, without due process of law . . ."

O.C.G.A. § 40-6-376(d) [the statute in question— prosecution of traffic offenses; double jeopardy]:

No court, other than a court having jurisdiction to try a person charged with a violation of Code Section 40-6-393 [homicide by vehicle], shall have jurisdiction over any offense arising under the laws of this state or the ordinances of any political subdivision thereof, which offense arose out of the same conduct which led to said person's being charged with a violation of Code Section 40-6-393 and any judgment rendered by such court shall be null and void.

O.C.G.A. § 40-6-390 [reckless driving]:

Any person who drives any vehicle in reckless disregard for the safety of persons or property commits the offense of reckless driving [a misdemeanor].

O.C.G.A. § 40-6-393(a) [felony vehicular homicide]:

Any person who, without malice aforethought, causes the death of another person through the violation of . . . Code Section 40-6-390 [reckless driving] . . . commits the offense of homicide by vehicle in the first degree and, upon conviction thereof, shall be punished by imprisonment for not less than three years nor more than 15 years.

The following additional statutes are set forth verbatim in the Appendix: O.C.G.A. § 40-6-393(b) [misdemeanor vehicular homicide] [A-30]; O.C.G.A. §§ 15-9-30(b), 40-13-21 [jurisdiction of courts] [A-31]; O.C.G.A. §§ 40-5-54, 40-5-57.1, 40-5-63 [driver's license suspensions] [A-32].

STATEMENT OF THE CASE

On November 2, 2000, Petitioner "Tommy" Perkins was involved in an automobile accident which resulted in the death of Brenda Crider. Ms. Crider died at the scene. In two separate traffic citations, a Deputy Sheriff cited Petitioner for felony vehicular homicide and the lesser included misdemeanor of reckless driving. He was arrested and jailed.

On November 7, 2000, five days after Petitioner's arrest, Sheriff's deputies took him, in chains, shackles and handcuffs, to the Whitfield County Probate Court for arraignment on the reckless driving charge alone. When Probate Judge Robert Smalley asked Petitioner how he wished to plead, Tommy Perkins, then 18 years old and without benefit of counsel, pleaded guilty. Judge Smalley sentenced Petitioner to three months probation, with a number of restrictive conditions and a fine and probation fees totaling \$184.00.² [A-2] Additionally, Petitioner's driver's license was suspended for six months as a result of the Probate Court conviction.³

Petitioner fully served the probated sentence and fully paid the fine and fees. Petitioner reported to his probation officer periodically as required, and he complied with the other conditions of the probation. The probated sentence ended on February 7, 2001.

On April 24, 2001, two and a half months after Petitioner completed the Probate Court's sentence, a grand jury indicted him for the same reckless driving offense and for vehicular homicide. [A-4] He timely filed a plea of former jeopardy in the Superior Court.

² The Probate Court's sentence contains the enigmatic handwritten note at the bottom, "consecutive to pending charges," suggesting that Judge Smalley may have been aware of the vehicular homicide charge.

³ Under Georgia law, the driver's license of any driver under 21 years of age is suspended for six months upon a conviction for reckless driving. O.C.G.A. § 40-5-57.1. [A-32]